



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD)No.7339 of 2010

and

M.P. (MD)No.1 of 2010

WEB COPY

M/s.Immanuvel Socks Manufacturers
Rep. by its Managing Partner
Tmt. Merita
198/2-A, Theri Road,
Pudukottai,
Tuticorin.

... Petitioner

versus

1. The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Tuticorin.

2. The Executive Engineer,
Distribution (Rural)
Tamil Nadu Electricity Board,
Tuticorin.

3. Assistant Executive Engineer,
Distribution (Rural)
Tamil Nadu Electricity Board,
Tuticorin.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Certiorarified Mandamus, to call for the records relating to the impugned order of the 3rd respondent inRef.No.Ka.No.Vu.Chae.Po/V/Voo/Thoodi/E.Ni.Voo/Ko.Kattu/A.No.172/2010 dated 25.05.2010 and quash the same and forbearing the respondents from disconnecting the service connection B2 is under tariff III B in the petitioner's premises bearing Door No.198/2A, their Road, Pudukottai, Tuticorin District.

For Petitioner : Mr.V.Radhakrishnan,
Senior Counsel
for Mr.S.Kadarkarai

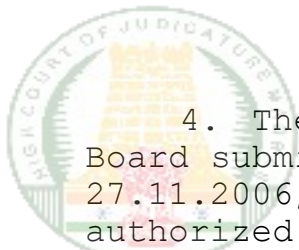
For Respondents : Mr.S.Deenadhayalan
Standing Counsel

**ORDER**

This writ petition has been filed seeking to quash the provisional assessment order issued by the third respondent in Ref.No.Ka.No.Vu.Chae.Po/V/Voo/Thoodi/E.Ni.Voo/Ko.Kattu/A.No.172/2010 dated 25.05.2010 and forbear the respondents from disconnecting the service connection under tariff III-B in the petitioner's premises bearing Door No.198/2A, Theri Road, Pudukottai, Tuticorin District.

2. The case of the petitioner is that the petitioner Industry, namely, M/s.Immanuvel Socks Manufacturers, is engaged in manufacture of poly bags. The respondent Electricity Board has given electricity service connection to the petitioner's premises in the Service Connection No.B2. On 29.03.2010, when the Assistant Executive Engineer of TNEB's Enforcement Wing inspected the premises of the petitioner, the officials detected theft of energy. The respondent issued a show cause notice/provisional assessment order fixing liability on the theft of energy detected as Rs.31,07,230/- and also disconnected the electricity service connection. Challenging the same, the petitioner filed a writ petition before this Court in W.P.(MD)No.5330 of 2010. This Court, by order dated 20.04.2010, disposed of the writ petition with a direction to the petitioner to offer his explanation to the impugned show cause notice and on receipt of the same, the third respondent is directed to consider and dispose of the same on merits and in accordance with law. This Court further directed that since the petitioner paid a sum of Rs.3,40,000/- towards compounding charges on 25.03.2010, the third respondent is directed to restore the service connection immediately. Pursuant to the direction of this Court, the electricity service connection was restored. In the meantime, the petitioner also gave a detailed reply to the show cause notice on 26.04.2010. However, the respondents, without considering the same, passed the impugned order dated 25.05.2010, reiterating their earlier stand and also imposing an extra levy of Rs.31,07,230/- Aggrieved over the same, the present writ petition is filed.

3. The learned counsel for the petitioner submits that as per Section 126 of Electricity Act, 2003, the inspection can be made only by the authorized Officer. But, in this case, the inspection was carried out by the Assistant Executive Engineer, who is not the authorized Officer to conduct the inspection. He further submits that the petitioner Factory is in a rural area and the rural areas are not supplied with 24 hours of electricity supply and as per Table B in Form 8 of the Tamil Nadu Electricity Supply Code, 2004, the calculation has to be made for 14 hours per day. But, in this case, the respondents have calculated the supply of electricity as 22 hours per day and calculated the provisional assessment for a period of one year and also imposed penalty of Rs.31,07,230/-, which is against the provisions of the Tamil Nadu Electricity Supply Code, 2004 and liable to be set aside.



4. The learned Standing Counsel appearing for the respondent Board submits that as per G.O.Ms.118, Energy (B.2) Department, dated 27.11.2006, the Assistant Executive Engineer is an Officer authorized under Section 126 of the Electricity Act, 2003. Regarding the other submissions made by the learned Senior Counsel appearing for the petitioner, the learned Standing Counsel submits that though the petitioner unit is situated in a rural area, the petitioner unit runs three shifts per day for 22 hrs. and therefore, it has been calculated as 22 hrs as per Regulation 23 (AA) 7 of the Tamil Nadu Electricity Supply Code, 2004. Hence, there is no error in the impugned order.

5. This Court considered the rival submissions made.

6. The writ petition is filed as against the provisional assessment order dated 25.05.2010. The petitioner is running an industry manufacturing poly bags at Theri Road, Pudukottai, which is admittedly a rural area. The petitioner was having an industrial connection and on 29.03.2010, the Assistant Executive Engineer inspected the premises of the petitioner industry and deducted theft of energy. The petitioner industry has also compounded the offence under Section 135 of the Electricity Act, 2003 and also paid the compounding charges as per Section 152 of the Electricity Act, 2003. Therefore, the respondent Board issued the impugned provisional assessment order/show cause notice for the theft of energy, which was calculated as per Regulation 23 (AA) 7 of the Tamil Nadu Electricity Supply Code, 2004.

7. The grievance of the petitioner is that the calculation has not been made as per Regulation 23 (AA) 7 of the Tamil Nadu Electricity Supply Code, 2004 and amount has been calculated treating the unit as it is functioning 24 hours per day and calculated as 22 hours per day and therefore, the demand was made at Rs.31,07,730/-. Since the unit was functioning in a rural area, the calculation ought to have been made only for 14 hrs.

8. The learned Senior Counsel appearing for the petitioner has also taken out another ground that the inspection conducted by an Officer is not an authorized Officer under Section 126 of the Electricity Act, 2003. The learned Standing Counsel has also produced the Government Order in G.O.Ms.No.118 dated 26.11.2006 authorizing the Assistant Executive Officer as an Officer for inspection under Section 126 of the Electricity Act, 2003. Therefore, the first limb of the argument is not accepted.

9. The second limb of argument of the petitioner is that the petitioner Factory is functioning in a rural area and therefore, the calculation of assessment has to be calculated only for 14 hrs. of supply instead of 22 hrs of supply.



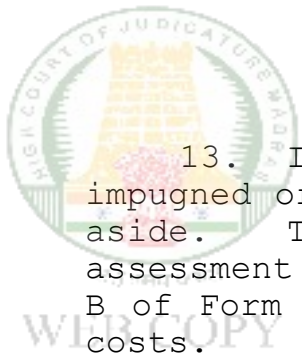
10. Regulation 23 (AA) 7 of the Tamil Nadu Electricity Supply Code, 2004 reads as follows:

"(7) Where it is established that there is a case of theft of energy, the authorized officer shall assess the quantum of energy consumption for the past twelve months as per the assessment formula given in Form 8 in Appendix to this Code and prepare provisional assessment order for the charges for such consumption at two times of the tariff applicable (i.e. the applicable tariff for the purpose for which the pilfered energy was used) and on the accused person under proper receipt. The authorized officer may reduce the period for such billing if it is established by the facts or documents submitted in the representation of the accused person or any such other evidence observed by the authorized officer. Wherever electronic meters are installed and the load curves are studied periodically, the period of theft could be limited to the exact period as could be determined scientifically. The authorized officer shall record reasons for such reduction in the period of billing, in the assessment order. The energy consumption arrived at as per the formula referred to in the said Form 8 will be charged excluding the energy consumption recorded by the meter as per the specified by the Commission's Tariff Order."

11. Table B in Form 8 is extracted hereunder:

Category		Number of hours per day
1.	Fed by High Tension rural feeders having only 14 hours of supply per day	
	(i) Day shift only	6
	(ii) Night shift only.	8
	(iii) Both day and night.	14
2.	Fed by High Tension feeders having 24 hours of supply	
	(i) Day shift only	8
	(ii) 2 Shifts	16
	(iii) 3 Shifts	2

12. Admittedly, the petitioner unit was functioning in a rural area. Wherever high tension service connection was provided to the rural area, the assessment has to be calculated as per Form 8. Table B in Form 8 prescribes that rural feeder functions only 14 hrs of supply per day. Therefore, the respondents ought to have calculated the amount of penalty for 14 hrs per day, instead, the respondents have calculated it as 22 hrs.



13. In view of the above, the writ petition is allowed and the impugned order passed by the 3rd respondent dated 25.05.2010 is set aside. The respondent Board is at liberty to issue a fresh assessment order as per Regulation 23 (AA) 7 as stipulated in Table B of Form 8 of the Tamil Nadu Electricity Supply Code, 2004 . No costs.

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Tamil Nadu Electricity Board,
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2. The Executive Engineer,
Distribution (Rural)
Tamil Nadu Electricity Board,
Tuticorin.
3. Assistant Executive Engineer,
Distribution (Rural)
Tamil Nadu Electricity Board,
Tuticorin.

+1 CC to M/s.S.KADARKARAI, Advocate (SR-20944[F] dated 25/04/2022)

W.P. (MD)No.7339 of 2010

22.04.2022

MGJ(27.05.2022) 5P 5C